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EXTRAORDINARY

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No. 22] NEW DELHI, TUESDAY, MARCH 11, 1958/PHALGUNA 20, 1879

MINISTRY OF LABOUR & EMPLOYMENT

NOTIFICATIONS

New Delhi, the 26th February 1958

S.O. 190.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following awards of the Central Government Industrial Tribunal, Calcutta in the matter of applications under section 33A of the said Act.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA:

20/1 Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION NO. 89 OF 1957: (u/s 33-A)

Ali Ahmed, Helper Electrician under the Garage Superintendent, c/o Calcutta Port Shramik Union, Port Shramik Bhawan, 26 Pipe Road, Calcutta-23.—Complainant.

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta 1.—Opposite Party.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 4th February, 1958.

PRESENT:

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri N. M. Das Gupta, Advocate, for the Calcutta Port Commissioners.

None for the complainant.

AWARD

The present application under section 33-A of the Industrial Disputes Act has been filed by Ali Ahmed, an employee of the Port Commissioners, complaining that he had been dismissed wrongfully with effect from 6th December, 1956 during the pendency of the main adjudication proceedings without any permission of the Tribunal as contemplated by section 33 of the Act.

2. The Port Commissioners deny to have contravened section 33 of the Industrial Disputes Act. They plead that the complainant was employed as a temporary worker and according to the rule of the Administration his case was referred to the police authorities for a report after verification as to the suitability of his employment without which no temporary worker is confirmed, and that as the police submitted an adverse report the services of the complainant could not but be terminated.

3. Exhibit E/1 is the report of the Deputy Inspector General of Police, I.B., C.I.D., West Bengal. The report is that Ali Ahmed is a kidnapper and took part in objectionable meetings. In Government service as also in semi-Government services no employees are confirmed without police verification. The police is considered to be the proper authority to make such enquiries. The police report cannot be lightly thrown away. The police report is mainly based upon local enquiries and such enquiries are made without any notice to the employee concerned. If the complainant has any real grievance against the report he could have examined respectable persons of his locality to refute the report. He did not do so. Hence in the circumstances of the present case I cannot direct the Port Commissioners to retain the complainant in their service against a police report. Hence my award is that the complainant was justly dismissed.

CALCUTTA,

4th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,

Central Government Industrial Tribunal,
Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA:

20/1 Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION NO. 40 OF 1957: (u/s 33-A)

Dulal Chandra Dey, Manager, and others of C.P.C. Workshops' Canteen, c/o C.P.C. Workers' Union, 8, Joykrishna Paul Road, Kidderpore, Calcutta-23.—Complainants.

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1.—Opposite Party.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 4th February, 1958.

PRESENT:

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri Rajani Mukherjee, and Shri Monoranjan Dey of C.P.C. Workers Union for the complainants.

Shri N. R. Sen, Assistant Welfare Officer for the Calcutta Port Commissioners.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 was filed by the workers of the Calcutta Port Commissioners Workshops' Canteen on 22nd December, 1956 complaining that the Port Commissioners, Calcutta, have contravened section 33 of the Act during the pendency of the main adjudication proceedings without the express permission of the Tribunal as required by this section. The petitioners claim to have been working in the canteen since the very start, that is, from the 21st January, 1954. Their grievances are:

- (1) They were paid their salaries in Port Commissioners wage sheets for four months. Subsequently the wage sheet was changed and they are paid in white sheets.
- (2) They are not paid minimum wages.
- (3) They are not considered factory staff and the benefits in respect of pay, allowances, leave, Provident Fund and medical facilities which the employees of the canteen controlled by the Welfare Officer enjoy have been denied to the petitioners.

(4) Neither any service rules nor any standing orders have been framed to govern the service conditions of the petitioners.

They accordingly pray that they may be granted:

- (a) The minimum pay and allowances at par with Port Commissioners staff.
- (b) The status of the Port Commissioners staff like bhandaries and the staff of the Mess and Welfare Canteens.
- (c) Annual leave with pay like the Port workers.
- (d) Free medical facilities like the Port Commissioners staff.
- (e) Half pay leave on Saturdays like the P.C. staff, and
- (f) Benefit of Provident Fund and Gratuity.

2. The Port Commissioners opposed the application. Their main contention is that there has been no contravention of section 33 of the Industrial Disputes Act and the present application under section 33-A is not maintainable. A further question was raised at the hearing as to whether the Calcutta Port Commissioners are the employers in respect of Workshop Canteen workers.

3. Section 33 of the Industrial Disputes Act, 1947 prohibits, during the pendency of adjudication proceedings before an industrial tribunal in respect of any industrial dispute, except with the express permission of the Tribunal:

- (a) alteration of the service conditions applicable to workmen concerned in such dispute immediately before commencement of the adjudication proceedings to their prejudice, and
- (b) discharge or punishment whether by dismissal or otherwise of any workman concerned in the industrial dispute.

4. In the event of contravention of these provisions, the aggrieved workmen may move the Tribunal before whom the adjudication proceedings are pending and the Tribunal is to adjudicate upon the complaint as if it were a dispute referred to or pending before it in accordance with the provisions of the Act.

5. Industrial Tribunals can assume jurisdiction over an industrial dispute only when it is referred to it by the appropriate Government under section 10 of the Act. Section 10 of the Industrial Disputes Act, 1947 lays down the general law. Industrial Tribunals have no jurisdiction to entertain any industrial dispute unless it comes for adjudication through the appropriate Government as provided in Section 10 of the Act. Section 33-A lays down a special law authorising Industrial Tribunal to entertain industrial disputes, under special circumstances, directly from the employees without the intervention of the appropriate Government and to adjudicate upon it. Industrial Tribunals can assume jurisdiction over an industrial dispute, under section 33-A, provided the dispute amounts to a contravention of section 33 of the Act and provided such contravention took place during the pendency of adjudication proceedings in respect of industrial disputes before them. Section 33-A may be invoked only when these special conditions are fulfilled. Section 33-A purports to lay down a special law and it must be strictly interpreted. Hence we are to enquire as to whether there has been any contravention of section 33 of the Industrial Disputes Act during the pendency of the main adjudication proceedings. The case as made out in the petition of complaint does not come under clause (b) of section 33 inasmuch as none of the petitioners was discharged or punished. The benefits they claim were never enjoyed by them. The terms and conditions of their service to-day were the same as were before commencement of the main adjudication proceedings. According to the petitioners own case they never got pay and allowances at par with the Port Commissioners' staff. They were never given the status of the Port Commissioners' staff like the Bhandaris and the staff of the Mess and the Welfare Canteens. They never enjoyed annual leave or medical facilities or half pay leave on Saturdays like the Port Commissioners' staff and they were never given benefit of the Provident Fund and gratuity. Hence I must hold that there was no alteration of the service conditions of the petitioners applicable to them immediately before commencement of the main adjudication proceedings and hence no contravention of section 33. In this view of the case I have no jurisdiction to entertain the complaint. The petitioners may have genuine grievance in respect of the service conditions as they allege in the petition of complaint since the very beginning of their employment but such grievance cannot be looked into under section 33-A of the Industrial Disputes Act. In the result the petition of complaint must stand rejected.

6. After what I have said, I need not go into the question as to whether the Port Commissioners are employers of the workshop canteen staff.

CALCUTTA;

The 4th February, 1958.

(Sd.) A. Das GUPTA, Sole Member,
Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1 Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 41 of 1957: (u/s 88-A)

- (1) Shri Murari Mohan Banerjee,
- (2) Shri Hirendra Nath Chakrabarty,
- (3) Shri Nalini Kumar Bose,
- (4) Shri Sunil Dey, and
- (5) Shri Sunil Baran Deb, c/o Port Shramik Union, Port Shramik Bhawan, 26 Pipe Road, Kidderpore, Calcutta-23—*Complainants.*

Versus

Calcutta Port Commissioners, 15, Strand Road, Calcutta-1.—*Opposite Party.*

In the matter of a complaint under section 88-A of the Industrial Disputes Act, 1947
arising out of Reference No. 1 of 1956.

Dated, the 5th February 1958

PRESENT :

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri Prasanta Dutta of Port Shramik Union *for the complainant.*

Shri N. M. Das Gupta, Advocate, *for the Port Commissioners.*

AWARD

The present application under section 88-A has been filed by five employees of the Labour Section complaining that the terms and conditions relating to holiday allowance were altered by the Port Commissioners to the prejudice of the applicants during the pendency of the main adjudication proceedings without express permission of the Tribunal as contemplated by section 88 of the Industrial Disputes Act, 1947.

2. The Port Commissioners deny to have altered the terms and conditions as alleged by the petitioners and have raised a preliminary objection about the maintainability of the present application under section 88-A.

3. A circular order dated 8th May, 1954 (Exhibit W. 8) shows that for work on any holiday for which holiday allowance is payable the workers are to be paid at 1/208th of basic pay plus dearness allowance and Compensatory Allowance per hour, a day being taken as equivalent to 7 hours. Exhibit E/2 shows that there having been no fixed recess hour, the employees had all along been paid for 7 hours work on paid holidays without any deduction for the recess period. Employees were not allowed any recess and I understand the same practice still obtains. The employees found out some time in course of their duty to have their tiffin and the time taken for the purpose was very negligible. On 8th August 1956 and 2nd May, 1957 which were paid holidays the complainants were drafted for work. They worked for the full days but were paid for six hours for each day deducting one hour for recess. The Assistant Accountant was examined in this case. He cannot say at what hour of the day the employees were allowed recess for tiffin. Thus it is clear that during the pendency of the main adjudication proceedings the system of payment for work on paid holidays was altered without any justification. As no time was specifically provided for recess and as the complainants worked for the normal scheduled hours, no deduction can be made in computing the allowance which has got to be paid to these workmen for work on these two holidays. The employees might have found a few minutes' time to take their tiffin. Unless it is found out how much time they took for the tiffin no deduction can be made on the arbitrary assumption that one hour was the recess period. This alteration in the system of payment has undoubtedly prejudiced the workmen and the Port Commissioners did not obtain any permission of this Tribunal for the alteration. The complainants shall accordingly be paid for 7 hours work for each of these two days.

4. This is a case of alteration of the system of payment for work on holidays and not merely arrears as contended on behalf of the Port Commissioners.

5. In this view of the case the complaint is maintainable. I accordingly award that for work on 8th August, 1956 and 2nd May, 1957 which were admittedly allowance payable holidays the complainants shall be paid for seven hours work on each day at the rate of 1/208th of the basic pay plus dearness allowance and compensatory allowance.

CALCUTTA:

The 5th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,

Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/L Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION NO. 48 OF 1957: (U/s 33-A)

Shri Balaram Chatterji, I.C.E. Fitter, Grade II, Ticket No. 45 of Hydrolic Pumping Station K. P. D. (C.M.E.), C/o C. P. C. Workers Union, 3 Joykrishna Paul Road, Calcutta-23—*Complainant.*

Versus

Calcutta Port Commissioners, 15, Strand Road, Calcutta-1—*Opposite Party.*

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 5th February 1958

PRESENT :

Shri A. Das Gupta, Sole Member.

APPEARANCES :

Shri A. L. Roy of C.P.C. Workers' Union for the Complainant.

Shri K. B. Bose, Counsel, with Shri N. M. Das Gupta, Advocate, for the Calcutta Port Commissioners.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 was filed on the 11th October, 1957 by Shri Balaram Chatterjee, I.C.E. Fitter, Grade II, Ticket No. 45 of Hydrolic Pumping Station, K. P. D. (C.M.E.), complaining that with effect from the 11th July, 1957, during the pendency of the main adjudication proceedings, the Administration suddenly stopped employing the applicant, to his prejudice, for overtime work on Fridays, as he had been employed before along with other workmen of the group, without express permission of the Tribunal as contemplated by section 33 of the Act.

2. The Port Commissioners, Calcutta, plead that as the applicant is slack in his job and his output is unsatisfactory, he is not employed for overtime work. The Port Commissioners also state that the applicant is in the habit of complaining falsely against his superiors.

3. On 14th March, 1945, the petitioner was appointed a fitter, Diesel Section, K.P.D. After sometime, he was transferred to No. 8 workshop, and in the beginning of 1957 he was re-transferred to Diesel Section, K.P.D. The petitioner belongs to the maintenance staff. The maintenance staff, K.P.D. are employed in four groups and are allowed weekly off day on different days of the week. They are also allowed one half day off by rotation. The petitioner belongs to Group I. Workmen of Group I who are entitled to four hours off on Friday every week are employed for these four hours and are paid for such overtime work at the usual overtime rate. The petitioner was also employed for such overtime work till 11th July, 1957 since when the Administration stopped employing him for such overtime work. The Port Commissioners have exhibited some documents (Exhibits E/1 to E/5) which show that the petitioner was not only a bad workman with poor output but that he was also of obstructing habit making false allegations against his superiors and refusing to carry out orders of the superiors on frivolous grounds. If in view of the unsatisfactory work and obstructing habit of the petitioner the Administration decides not to employ him beyond normal working hours, the Administration cannot be blamed. Besides the Administration has absolute discretion to decide whether any workman should be employed for overtime work.

and who should be employed. Workmen cannot claim as of right to be employed for overtime work. Overtime work depends upon exigencies of work in an industry and cannot be, dependent as it is on the absolute discretion of the Administration, a condition of employment. Non-employment of the petitioner for overtime work does not accordingly amount to violation of section 33 of the Industrial Disputes Act and the present petition is not accordingly maintainable. Even assuming that refusal to employ the petitioner for overtime work amounted to alteration of his service condition, the refusal was justified and the petitioner has no relief. This is my award.

CALCUTTA:

The 5th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,

Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1 Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 52 OF 1957: (U/s 33-A)

Shri Ram Bilash Yadava and others of C.P.C. Workshops Canteen, C/o C.P.C. Workers Union, 3 Joy Krishna Paul Road, Calcutta-28—Complainants.

Versus

Calcutta Port Commissioners, 15, Strand Road, Calcutta-1—Opposite Party.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 6th February 1958

PRESENT:

Shri A. Das Gupta, Sole Member.

APPEARANCES:

'Shri Rajani Mukherjee and Shri Monoranjan Dey of C.P.C. Workers Union for the Complainants.

Shri N. R. Sen, Assistant Welfare Officer, for the Port Commissioners, Calcutta.

AWARD:

The present application under section 33-A of the Industrial Disputes Act, 1947 was filed on 11th November, 1957 by some employees working in the Calcutta Port Commissioners' Workshops Canteen complaining that free tiffin both in the morning and evening which they had been getting in the past had been withdrawn to the prejudice of the petitioners during the pendency of the main adjudication proceedings without express permission of the Tribunal as required by section 33 of the Act.

2. The Port Commissioners denied to have contravened the provisions of section 33 of the Industrial Disputes Act. A preliminary objection has been raised as to the maintainability of the present application against Port Commissioners on the ground that the Port Commissioners are not the employers of the Canteen Workmen.

3. The Canteen is run by a Committee consisting of representatives of the Port Commissioners as also of the employees. The canteen employees, are appointed and paid by this Committee and all disciplinary actions are also taken by this Committee.

4. There is nothing to show that the canteen employees were taking tiffin without payment to the knowledge and consent of the authorities. If they took tiffin without any payment, they did so stealthily. The Committee which had no suspicion in the past did not keep a close watch over the employees in this connection. On 17th October 1957 some of the employees were detected to have eaten canteen foodstuff. When this was placed before the Committee the employees were warned and cautioned by a resolution which was proposed and seconded by the representatives of the employees and carried by majority. Even assuming that the canteen employees took free tiffin in the past there is nothing to show that it was a condition of their service. If they took such tiffin without the knowledge and consent or approval of the Committee, it amounted to a criminal offence. This can by no stretch of imagination be a condition of service as contemplated under section 33. If the management stopped the mal-practice there is no contravention of section 33 of the Industrial Disputes Act. The petition of complaint accordingly stands rejected. This is my award.

5. In view of my findings on the merit, I don't propose to enter into the preliminary point.

CALCUTTA:

The 6th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,

Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1 Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION NO. 58 OF 1957: (U/s 33-A)

Shri Balaram Chatterjee, I.C.E. Fitter, Gr. II, T. No. 45 of Diesel Engineer Foreman's Section, C.M.E. Dept. C/o C.P.C. Workers Union, 3 Joykrishna Paul Road, Calcutta-23—*Complainant.*

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1—*Opposite Party.*

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Delhi, the 6th February 1958

PRESENT:

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri A. L. Roy of C.P.C. Workers Union for the Complainant.

Shri K. B. Bose, Counsel, with Shri N. M. Das Gupta, Advocate, for the Calcutta Port Commissioners.

AWARD:

The present application under section 33-A of the Industrial Disputes Act, 1947 has been filed by Shri Balaram Chatterjee, I.C.E. Fitter, Gr. II, Ticket No. 45 of Diesel Engine Foreman's Section (C.M.E.) on 11th November, 1957 complaining that during the pendency of the main adjudication proceedings six junior men were promoted to Grade 'I' fitter wrongfully superseding the petitioner's claim for such promotion without express permission of the Tribunal as required by section 33 of the Act.

2. The Port Commissioners, Calcutta, plead that promotions are given strictly on the principle seniority *cum* suitability. The six workmen mentioned in the petition of complaint, two of whom are senior to the petitioner, were promoted to Grade I fitter for they had passed the trade test provided for the purpose. The petitioner refused to appear at the trade test more than once when such chances for promotion came to him. Seniority is not the only criterion for promotion. Promotion of Class IV employees was a specific issue in the main adjudication proceedings and it has been laid down that promotion should be given strictly on the principle seniority *cum* suitability. The petitioner was present at the hearing but did not examine himself to deny that he had refused to appear at the trade test. On the other hand, his petition of complaint indicates that he has no faith in such trade test which he calls farce. To decide eligibility of a workman for promotion is the exclusive function of the management. If the petitioner refused to appear in a trade test or if he failed at any trade test, the management was perfectly justified to refuse promotion to him and to promote those who had passed the trade test notwithstanding that they were junior to the petitioner. In this view of the case, the petitioner is not entitled to any relief. The petitioner is still at liberty to appear at the next trade test and to prove his efficiency for promotion.

CALCUTTA:

The 6th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,

Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1 Gurusaday Road, Ballygunge, Calcutta-19.

APPLICATION No. 51 of 1957: (U/s 33-A)

Shri Shib Chandra Das, I.C.E. Fitter Gr. I, Diesel Engine Foreman's Section, C.M.E. Dept., C.P.C., C/o C.P.C. Workers Union, 3 Joy Krishna Paul Road, Calcutta-23—Complainant.

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 7th February 1958

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri A. L. Roy of C.P.C. Workers Union for the complainant.

Shri K. B. Bose, Counsel, with Shri N. M. Das Gupta, Advocate, for the Port Commissioners, Calcutta.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 was filed on the 30th October, 1957 by **Shib Chandra Das, I.C.E. Fitter, Gr. I, Diesel Engine Foreman's Section**, complaining that during the pendency of the main adjudication proceedings he was superseded by four employees who were junior to him as detailed below:

1. Kanai Lal Das, I.C.E. Fitter Gr. I—promoted to Grade A post and again to Jr. Supervisor.
2. Surendra Nath Das, I.C.E. Fitter Gr. I—promoted to Gr. A.
3. Samsuddin—promoted to Jr. Supervisor from Leading Hand.
4. Jogin Mistry—promoted to Jr. Supervisor from Leading Hand.

The petitioner pleads that this supersession amounts to change in the condition of his service to his prejudice for which no express permission of the Tribunal was obtained.

2. The application is opposed by the Port Commissioners, Calcutta. They deny to have changed the conditions of service of the petitioner to his prejudice as alleged and plead that inasmuch as there has been no contravention of section 33 of the Industrial Disputes Act, the present application is not maintainable.

3. The petitioner **Shib Chandra Das** has examined himself. It transpired at the hearing that Kanai Lal Das and Surendra Nath Das were in Grade A and Samsuddin and Jogin Mistry were Leading Hands. Although the length of service put in by the first mentioned two workmen was less than that put in by **Shib Chandra Das**, they appear to have been promoted to Grade A on 1st April 1958 when no adjudication proceedings were pending before this Tribunal. The total length of service put in by Samsuddin and Jogin were much more than that put in by **Shib Chandra Das** and they appear to have been promoted to the grade of Leading Hands on 1st January 1952. It was shown the service sheets of these men. The dates of their appointment and promotion to higher grade appear to have been correctly stated in the written statement of the Port Commissioners. The following table will show at a glance the relative priority of these persons for promotion:

Sl. No.	Name	Date of appointment.	Grade I	Grade A	Leading Hand	Junior Supervisor
1.	Kanailal Das	4-12-45	..	I-4-55	..	20-9-57
2.	Surendranath Das	28-12-44	..	I-4-55	..	..
3.	Samsuddir	1-II-24	..	..	I-1-52	20-9-57
4.	Jogin	15-4-19	..	..	I-1-52	20-9-57
5.	Shib Ch Das (Applicant)	27-7-44	..	..	..	..

Promotion to a higher grade is to be from the grade just below it and promotion from the grades further down is permissible only when there is no employee in the grade just below or when a suitable man is not available from among the men in the grade just below. Promotion to the higher grade shall be according to seniority *cum* suitability and not seniority alone. Grade A and the grade for Leading Hands are undoubtedly senior to Grade I. The complainant is in grade I and the four peons mentioned in his petition of complaint are either in grade A or in the grade of the Leading Hands. The complainant had therefore no claim for promotion superseding the four persons mentioned in his petition unless they were found unsuitable for promotion. Thus there has been no contravention so far as promotion to the grade of Junior Supervisor is concerned. The petitioner's grievance is not in respect of promotion to Grade A or to the grade of Leading Hands. Even if he had made a grievance that Kanailal Das and Surendranath Das who were much junior to him had been promoted to Grade A superseding him, such supersession took place on 1st January 1955 when there was no adjudication proceedings pending before this Tribunal. In any case there has been no adjudication of section 33 of the Industrial Disputes Act and the present application must be rejected as not maintainable. This is my award.

CALCUTTA:

The 7th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,
Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA

20/1 Gurussaday Road, Ballygunge, Calcutta-19

APPLICATION NO. 54 OF 1957 : (U/S 33-A)

- (1) Shri Azmat Hossain,
- (2) Shri Barsati Jeswara,
- (3) Shri Surja Ahir,
- (4) Shri Sital Ch. Khata,
- (5) Shri Talabar Manjhe,
- (6) Shri Samdeo Jeswara, and
- (7) Shri Sonai Jeswara, all Khalasis under the Superintendent, Kantapukur Traffic Department, C/o. C. P. C. Workers Union, 3 Joy Krishna Paul Road, Calcutta-23—Complainants.

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1—Opposite Party.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 7th February, 1958

PRESENT :

Shri A. Das Gupta, Sole Member.

APPEARANCES :

Shri A. L. Roy of C.P.C. Workers Union for the complainant.

Shri K. B. Bose, Counsel, with Shri N. M. Das Gupta, Advocate, for the Port Commissioners, Calcutta.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 has been filed by Azmat Hossain and six others who are Khalasis under the Superintendent, Kantapukur, Traffic Department, complaining that during the pendency of the main adjudication proceedings their service conditions have been altered to their prejudice without express permission of the Tribunal in as much as they are being made to carry loads on their head.

2. The Port Commissioners in reply to the petition of the workmen denied to have contravened section 33 of the Industrial Disputes Act, 1947. At the hearing Azmat Hossain examined himself. He gave us the details of the duties of the Khalasis at Kantapukur.

From his evidence it is clear that there has been no alteration in the duties of the Khalasis during the pendency of the main adjudication proceedings. They have been doing the same duties all along. Hence as there has been no contravention of section 33 of the Industrial Disputes Act, 1947 the present application is not maintainable and must be rejected. This is my award.

CALCUTTA :

The 7th February, 1958.

(Sd.) A. DAS GUPTA, Sole Member,
Central Government Industrial Tribunal, Calcutta.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1 Gurusaday Road, Ballygunge, Calcutta-19**

APPLICATION NO. 45 OF 1957: (u/s 33-A)

Motilal Alley, Watchman, Belt No. 131, C/o. Calcutta Port Commissioners Workers Union, 8 Joykrishna Paul Road, Calcutta-23—*Complainant.*

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1—*Opposite Party.*

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 28th January 1958

PRESENT :

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri R. N. Ghoshal, Assistant Traffic Superintendent for the Port Commissioners.

Shri A. L. Roy of C.P.C. Workers Union for the complainant/workman.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 was filed by Motilal Alley, Watchman, Belt No. 131 on the 28th August, 1957 complaining that the service condition under which promotion was given to Watchmen to the rank of Jamadar according to seniority has been altered, to the prejudice of the complainant, during the pendency of the adjudication proceedings and a junior man has been promoted to the rank of Jamadar without the express permission of the Tribunal as required by section 33 of the Industrial Disputes Act in violation of the service condition existing immediately before the commencement of the adjudication proceedings.

2. In reply the Port Commissioners denied to have contravened the provisions of section 33 of the Industrial Disputes Act and to have altered the service conditions relating to promotion which were, as settled by negotiations with the National Union, to be according to seniority cum suitability.

3. A test appears to have been held to find out a suitable man for promotion to the rank of Jamadar. The test sheet was produced before me which showed that Motilal Alley did not know English and cycling. Motilal Alley has appeared before me, he has been questioned by me and he admits that he does not know English. He can sign his name in English and write other names with much difficulty. As knowledge of English and cycling are essential for the post of Jamadar, Motilal Alley could not be suitable for promotion. We are not concerned here as to whether the man who was promoted was quite fit to be Jamadar. Even if he were not suitable, the position of Motilal Alley would not improve.

4. My attention has been drawn to the first sentence of Annexure A to the Port Commissioners written statement "at present promotions are made on the basis of seniority". Annexure A is a Note submitted by the Police Liaison Officer on 6th February, 1957 before the Secretary of the Port Commissioners suggesting some alteration in the rules of promotion on the ground that the existing rules were against efficiency of the department. Watchman is a Class IV officer. In the main reference there was a specific issue about promotion of Class IV officers under the Port Commissioners. Promotion according to seniority

without any regard to suitability of the man is undoubtedly against the interest of the industry and cannot be upheld. There might have been such a rule in the past but a rule which is against the interest of efficient working of an industry cannot be perpetuated simply because an alteration of the rule might affect some workmen who are presumably inefficient. If a workman is efficient he can have no misgiving that he would be superseded. All industrial disputes must be looked into objectively in the interest of the industry and not subjectively in the interest either of the workmen or of the employers. The interest of the industry demands that promotion should go to the seniormost man provided he is found suitable and that he should be passed over if he is not found suitable. Test of efficiency or suitability of an employee for a higher post is undoubtedly for the employers to decide. An outsider cannot be expected to decide the question correctly having regard to the requirements of the industry. In this view, so far as suitability of a workman for promotion is concerned it has been universally laid down that the employers have the exclusive right to decide the question. I accordingly reject the complaint. This is my award.

CALCUTTA :

The 25th January, 1958.

(Sd.) A. DAS GUPTA, Sole Member,

Central Government Industrial Tribunal, Calcutta.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1 Gurusaday Road, Ballygunge, Calcutta-19**

APPLICATION No. 46 OF 1957: (u/s 33-A)

Ganesh Bahadur Chatry, Watchman, Item No. 282, C/o. C. P. C. Workers Union,
3 Joykrishna Paul Road, Calcutta-23—Complainant.

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1—Opposite Party.

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947
arising out of Reference No. 1 of 1956.

Dated, the 25th January 1958

PRESENT :

Shri A. Das Gupta, Sole Member.

APPEARANCES:

Shri R. N. Ghoshal, Assistant Traffic Superintendent for the Port Commissioners.

Shri A. L. Roy of C.P.C. Workers Union for the complainant/workman.

AWARD

The present application under section 33-A of the Industrial Disputes Act, 1947 was filed by Ganesh Bahadur Chatry, Watchman, Item No. 282 on 28th August, 1957, complaining that the service condition under which promotion was given to watchmen to the rank of Jamadar according to seniority has been altered to the prejudice of the complainant, during the pendency of the adjudication proceedings and a junior man has been promoted to the rank of Jamadar without express permission of the Tribunal as required by section 33 of the Industrial Disputes Act in violation of the service condition existing immediately before the commencement of the adjudication proceedings.

2. In reply the Port Commissioners denied to have contravened the provisions of section 33 of the Industrial Disputes Act and to have altered the service conditions relating to promotion which were as settled by negotiations with the National Union, to be according to seniority *cum* suitability.

3. A test appears to have been held to find out a suitable man for promotion to the rank of Jamadar and the test sheet which is produced before me shows that Ganesh Bahadur Chatry does not know enough English and does not know cycling. Ganesh Bahadur has appeared before me and has been questioned by me. He says that he does not know English, he can sign his name only and that he knows cycling. It was contended on behalf of the Port Commissioners that if he knows cycling, he must have learnt cycling

after the test. Whatever that might be, as sufficient knowledge of English and cycling are considered essential for the post of Jamadar, Ganesh Bahadur could not be suitable for the post as he did not know English. We are not concerned with the question whether the man who was promoted was really suitable, for even if he was not suitable the position of the complainant would not improve.

4. My attention has been drawn to the first sentence of Annexure A to the Port Commissioners written statement "at present promotions are made on the basis of seniority." Annexure A is a Note submitted by the Police Liaison Officer on 6th February, 1957 before the Secretary of the Port Commissioners suggesting some alteration in the rules of promotion on the ground that the existing rules were against efficiency of the department. Watchman is a Class IV officer. In the main reference there was a specific issue about promotion of Class IV officers under the Port Commissioners. Promotion according to seniority without any regard to suitability of the men is undoubtedly against the interest of the industry and cannot be upheld. There might have been such a rule in the past but a rule which is against the interest of efficient working of an industry cannot be perpetuated simply because an alteration of the rule might affect some workmen who are presumably inefficient. If a workman is efficient he can have no misgiving that he would be superseded. All industrial disputes must be looked into objectively in the interest of the industry and not subjectively in the interest either of the workmen or of the employers. The interest of the industry demands that promotion should go to the seniormost man provided he is found suitable and that he should be passed over if he is not found suitable. Test of efficiency or suitability of an employee for a higher post is undoubtedly for the employers to decide. An outsider cannot be expected to decide the question correctly having regard to the requirements of the industry. In this view, so far as suitability of a workman for promotion is concerned it has been universally laid down that the employers have the exclusive right to decide the question. I accordingly reject the complaint. This is my award.

GALCUTTA :

The 25th January, 1958.

(Sd.) **A. DAS GUPTA**, Sole Member,
Central Government Industrial Tribunal, Calcutta.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CALCUTTA
20/1 Gurusaday Road, Ballygunge, Calcutta-19

APPLICATION NO. 47 OF 1957 : (u/s 33-A)

- (1) Ram Parkash Singh, Fireman No. 92,
- (2) Birsha, Fireman No. 120,
- (3) Ram Bhakta Gurung, Fireman No. 119, and
- (4) Bir Bahadur Gurung, Fireman No. 42, C/o. Calcutta Port Commissioners Workers'

Union, 8 Joykrishna Paul Road, Calcutta-23—*Complainants.*

Versus

Calcutta Port Commissioners, 15 Strand Road, Calcutta-1—*Opposite Party.*

In the matter of a complaint under section 33-A of the Industrial Disputes Act, 1947 arising out of Reference No. 1 of 1956.

Dated, the 25th January 1958

PRESENT :

Shri A. Das Gupta, Sole Member.

APPEARANCES :

Shri R. N. Ghoshal, Assistant Traffic Superintendent for the Calcutta Port Commissioners.

Shri A. L. Roy of C.P.C. Workers Union for the complainants/workmen.

AWARD

The present application under section 33-A of the Industrial Disputes Act was filed on the 12th September, 1957 by Shri Ram Prakash Singh, Fireman No. 92, Birsha, Fireman No. 120, Ram Bhakta Gurung, Fireman No. 119 and Bir Bahadur Gurung, Fireman No. 42,

complaining that they have been superseded by junior workers who had been promoted to the post of Leading Fireman. The supersession is alleged to have taken place during the pendency of the main adjudication proceedings. The complainants state that by such supersession their service condition has been altered to their prejudice without express permission of the Tribunal as required by section 33 of the Industrial Disputes Act.

2. The Port Commissioners denied to have violated the provisions of section 33 of the Industrial Disputes Act or to have superseded the applicants. Annexure A to the written statement of the Port Commissioners is a statement of staff showing their position in the seniority list. This is reproduced below:

Position in the seniority list as F/Man	Name	Date of appointment	Date of confirmation in the service	Date of adjustment as Fireman	REMARKS
17	Barkhu Jeswara	23-9-44	3-7-46	1-12-50	Found suitable after trial and permanently promoted to Junior Leading Fireman with effect from 1-12-56.
19	Kailash Dosad	26-5-45	17-10-46	1-12-52	-Do- with effect from 1-4-56.
29	Halswan Kurmi	10-8-45	29-1-47	1-11-53	-Do- with effect from 1-4-57.
33	Ram Samuj Jeswara	1-4-48	1-10-48	1-3-52	-Do, With effect from 1-4-57
39	Bik Bahadur Gurung	5-10-48	1-6-49	5-10-48	Acted as Junior L/F previously for the period : From To 14-6-52 13-7-52 1-4-53 14-5-53 15-6-53 19-9-53 Tried and found suitable and awaiting his turn for promotion to Junior L.F.
41	Ram Prokash Singh	5-10-48	1-6-49	5-10-48	Is now undergoing trial for 2 months from 20-10-57.
85	Rambakta Gurung	7-10-48	1-6-49	7-10-48	Awaiting his turn for trial of Junior L/F.
86	Bir Sha (Sha)	7-10-48	1-6-49	7-10-48	-Do-

3. The last mentioned four Firemen in the list are the complainants. These four Firemen were directly appointed as Firemen. The other four Firemen in the list whose names precede the names of the complainants were appointed long before the complainants were appointed. But, it is admitted that they were appointed as departmental mazdoors and were promoted to the rank of Firemen subsequently. They put in less service than the complainants as fireman although the total length of their service is much more than that of the complainants. The departmental mazdoors and the firemen are on the same scale of pay viz. Rs. 30-4-35 and are under the Traffic Department although they are in different sections. It is not disputed that inter sectional transfers were permissible at the time when these departmental mazdoors were made firemen. It is also not disputed that by such transfer they did not lose their seniority. Promotion of Class IV employees under the Port Commissioners was a specific issue in the main adjudication. We are not aware whether the transfer of departmental mazdoor to the rank of fireman was at the seeking of the workmen themselves or in the interest of the service. Whatever that might be at the time when the transfers were made the workmen were allowed to retain their

seniority. In this view of the case, these four departmental mazdoors who had put in longer service than the four complainants were senior to the complainants. Their suitability for the promotion is not also disputed. In this view of the case I must hold that there was no supersession.

4. It has been contended that Bir Bahadur Gurung, who had previously officiated as Leading Fireman, although for a short time, was entitled to promotion to the post of Leading Fireman superseding those who were senior to him in the list. Officiating appointments in higher posts, in the absence of any adverse remark, proves the suitability of the man for the higher post, but that does not create priority in his favour. These short term officiating appointments were given to him for reasons not known. Absence of the senior men might have been one of those reasons. As soon as Bir Bahadur Gurung reverted to his original post he came to his original position in the seniority list. The promotion post was available to the Fireman on 1st April 1957 on which day Bir Bahadur Gurung was only a fireman in the grade Rs. 30/-—35. He could not be given and was not given a higher position in the seniority list because he had officiated in the higher post in the past. Hence there was no supersession. The name of Bir Bahadur Gurung has been placed in the waiting list as a suitable person for promotion when the next vacancy crops up. In this view of the case the present application must be rejected.

CALCUTTA :

The 25th January, 1958.

(Sd.) A. DAS GUPTA, Sole Member,
Central Government Industrial Tribunal, Calcutta.

[No. LRII-81(2)58.]

New Delhi, the 1st March 1958

S.O. 191.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following awards of the Labour Court, Nagpur, in the Industrial dispute between the employers in relation to the North Chirimiri Colliery and their workmen.

BEFORE SHRI P. D. VYAS, JUDGE, LABOUR COURT NAGPUR, AT BOMBAY
(Sitting at Calcutta)

REFERENCE (I.C) No. 1 OF 1957

ADJUDICATION
BETWEEN

The North Chirimiri Colliery

AND

Their Workmen.

In the matter of an industrial dispute relating to the termination of services of a workman.

APPEARANCES:

For the North Chirimiri Colliery; Shri Madanlal, Labour Officer.

For the Workmen.—Shri D. L. Sen Gupta, Advocate.

AWARD

The Central Government in exercise of the powers conferred by clause (c) of sub-section (1) of section (10) of the Industrial Dispute Act 1947 (14 of 1947) has made this Reference for adjudication of an industrial dispute between the North Chirimiri Colliery and their workmen by an order No. LRII-55-2(19)/57 dated 1st May 1957. The dispute relates to the matter specified in the Schedule annexed thereto.

THE SCHEDULE

"Termination of services of Shri Siva Prasad Awasthy and the relief, if any, to which he is entitled."

2. On the usual notices being issued, the General Secretary Chhattisgarh Colliery Workers' Federation has filed the statement of claims on behalf of the workmen and the Manager, North Chirimiri Colliery has filed the written statement on behalf of the management of the said colliery.

3. The concerned workman is one Shri Siva Prasad Awasthy who was working as a mechanic in the North Chirimiri Colliery. The case of the workmen on his behalf is that with a view to victimize him for his trade union activities, the management of the colliery issued a transfer order on 28th January 1956 whereby he was called upon to resume his duties at the Kamptee Colliery. The North Chirimiri Colliery is under the management of United Collieries Ltd., whereas the Kamptee Colliery belongs to a different company named Messrs Kasta and Bihar Collieries Ltd. Both the collieries not being under the same management, the workman concerned requested the manager to cancel the transfer order but it was not so done and though he continued his duties upto 10th February 1956 at the North Chirimiri Colliery, later on he was stopped from work without any charge-sheet or enquiry. The termination of his services should thus be treated as wrongful and he should be reinstated with full back wages and the other amenities which he enjoyed.

4. The Management alleges that Shri Siva Prasad was originally appointed at the Rawanwara Khas Colliery and in the year 1950 he was transferred to the North Chirimiri Colliery, both being under the Managing Agency of Karam Chand Thapar & Bros. Private Ltd. The management denies knowledge of his trade union activities and states that the motive behind his transfer was to give him an independent chance at some colliery where he would have better prospects. The Kamptee Colliery is also under the Managing Agency of Messrs K. C. Thapar & Bros. Private Ltd. and accordingly the transfer order was issued directing him to report for duty at the said colliery with effect from 6th February 1956. His request for cancellation of the transfer order was, in the circumstances, not correct and after the transfer order, he was supposed to report for duty at the Kamptee Colliery and not at the North Chirimiri Colliery. He worked at the North Chirimiri Colliery upto 30th January, 1956 and not upto 10th February, 1956 and on 30th January, 1956 when he reported for duty he was explained the true position. Notwithstanding that he having failed to report for duty at the Kamptee colliery, it meant that he had voluntarily terminated his services and there arose no question of issuing any charge-sheet or making an enquiry.

5. It is an undisputed fact that the concerned workman was in employment at the North Chirimiri Colliery and under the transfer order he was called upon to report for duty at the Kamptee Colliery with effect from 6th February, 1956. It is also an undisputed fact that these are two different companies, though under the management of the same Managing Agent named Messrs Karam Chand Thapar & Bros. Private Ltd. It is a common ground between the parties that the transfer order in question was issued under the Standing Order No. 26 of the Standing Orders for the Coal Mining Industry. The same Standing Order says: "workmen are liable to be transferred from one department to another or from one station to another or from one colliery to another under the same management provided such transfer does not cause any prejudice to their wages and other conditions of service and provided that reasonable notice is given for such transfer". Thus apart from the question whether the wages and other conditions of service remain unaffected and a reasonable notice of such transfer has been given, what is contemplated under this Standing Order is that if the transfer is from one colliery to another it should be under the same management. The term 'management' is not defined under the Standing Orders and in the case before us it has been contended on behalf of the employers that though the two collieries named North Chirimiri Colliery and Kamptee Colliery belong to different companies, they being under the management of the same Managing Agents should be deemed to be under the same management. For this purpose my attention was drawn to the definition of the term 'management' in the Standing Orders governing the conditions of employment of workmen in vacuum pan Sugar Factories of Uttar Pradesh at page 33 of Indian Factories Journal, Vol. IX December 1955. According to the definition there given 'management' means "the managing director of a factory, the managing agent or managing agents, proprietor or proprietors, a partner or partners or such other person or persons or body or bodies of persons having authority to manage the affairs of a factory". Obviously the definition there given is to suit the purposes and requirements of the particular Standing Orders relating to certain Sugar Factories of Uttar Pradesh and it could hardly be made applicable to the Standing Orders of the coal Mining Industry. Besides, in the said Standing Orders there is no provision of a transfer from one sugar factory to another and if the definition as there given were accepted for the purposes of a transfer, it would lead to absurd results inasmuch as the managing Agent or Agents may be in the management of several concerns of an altogether different character. On behalf of the workmen, reliance was placed on a decision dated 13th November, 1956 of the Labour Appellate Tribunal of India in appeal No. Cal. 149 of 1956 against the award of All India Industrial Tribunal (Colliery Disputes) dated 24th April 1956 in Application No. 29 of 1955 under section 33A of Industrial Dispute Act. The Tribunal below while considering the question of a transfer under the Standing Order No. 26 for the Coal Mining Industry observed:

"As for the point that the company can transfer the workmen to any colliery under the same Managing Agency, it turns upon the interpretation of the word "Management" in Standing Order 26. The company wants to argue that the word "management" would cover the Managing Agents. It is needless to labour the point as there is no doubt that "management" can only refer to the company

which is a legal entity and not to their Managing Agents. A single Managing Agent, as we often see, can take up the managements of a large number of companies. But the managing agent gets his power to manage each company from the owner of that company and cannot mix up the affairs of one company with that of others."

"Rule 26 referred to above states that all workmen are liable to be transferred from one colliery to another under the same management. This could only mean that the workman can be transferred from one colliery to another under the management of that company, M/s. Bhawra Kankanee Collieries Ltd., whoever its managing agents are and not from one colliery of that company to another colliery of a different company merely because the managements of both the companies are in the hands of the same managing agency."

The Calcutta Bench of the Labour Appellate Tribunal of India in upholding this view on appeal before it, referred to the definition of the expression 'managing agent' in section 2(9-4) of Indian Companies Act 1913 and laid down that.

"the managing agents are entitled to the management of the whole affairs of the company under the control and direction of the directors of the company concerned. In the three companies with which we are concerned the Boards of Directors are different. If so, the Managing Agents of the Pootkee Colliery were not justified in ordering the transfers of Shri K. P. Mitra and Shri Santi Prakash from Pootkee Colliery to other collieries."

On the same reasoning which I adopt with respect, the stand taken up by the employers in the present case cannot be accepted as correct and simply because the Managing Agents are the same, it cannot be said that the two collieries owned by two different companies are under the same management.

6. If really the order of transfer was permissible under the Standing Order No. 26 and the concerned workman disobeyed the same, it was open to the employers to take action under the Standing Orders for the misconduct "insubordination or disobedience of any lawful or reasonable order of a superior". In the present case the management has proceeded under the misapprehension that as the concerned workman failed to report for duty at Kamptee Colliery in compliance with the transfer order, he had voluntarily terminated his services. He was accordingly informed by the manager of the North Chirimiri Colliery under his letter dated 15th February 1956:

"The Manager Kamptee Colliery informs me that you have not reported yourself on duty at that colliery on 6th February 1956, which means that you have voluntarily terminated your service. You must therefore vacate the quarters occupied by you as I have to allot it to some one else"

This was an entirely incorrect procedure based on a wrong view of the matter and this cannot be treated as a case of voluntary abandonment of service. Immediately after he was served with the order of transfer, the concerned workman had moved for its cancellation and had approached the labour authorities for intervention making it a grievance that the order of transfer was wrong and was meant to victimize him for his trade union activities. In any case if the Management thought that it was a reasonable and lawful order which the concerned workman disobeyed, such an act would amount to misconduct for which it was necessary to follow the proper procedure of a charge-sheet and an enquiry as required under the Standing Orders.

7. Thus on no ground the termination of the services of the concerned workman can be treated as correct and manifestly the action on the part of the management is illegal and improper. I therefore direct that the concerned workman Shri Siva Prasad Awasthy shall be reinstated on his original post with full back wages and other amenities which he is entitled to.

(Sd.) P. D. VYAS,

Judge, Labour Court.

Dated 10th February, 1958.

**BEFORE SHRI P. D. VYAS, JUDGE, LABOUR COURT NAGPUR, AT BOMBAY
(Sitting at Calcutta)**

REFERENCE /LC/ No. 4 OF 1957.

ADJUDICATION

BETWEEN

The North Chirimiri Colliery.

AND

Their workmen.

In the matter of an Industrial dispute relating to the alleged wrongful termination of the services of certain workmen.

APPEARANCES:

For the North Chirimiri Colliery: Shri Madanlal, Labour Officer.

For the workmen: Shri D. L. Sen Gupta, Advocate.

AWARD

The Central Government in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act 1947 (14 of 1947), has made this Reference for adjudication of an industrial dispute between the North Chirimiri Colliery and their workmen by Order No. LR-II-55-2(19)/57 dated 27th July, 1957. The dispute relates to the matter specified in the schedule annexed thereto.

THE SCHEDULE

Alleged wrongful termination of the services of the following workmen and the relief, if any, to which they are entitled:

- "(i) Shri Mangal Prasad, Ex-Pump Driver, North Chirimiri Colliery.
- (ii) Shri Prem Singh, Ex-Line Mistry, North Chirimiri Colliery."

2. On the usual notices being issued, the General Secretary, Chhattisgarh Colliery Federation has filed the statement of claims on behalf of the workmen, and the Manager, North Chirimiri Colliery has filed the written statement on behalf of the management of the said colliery.

3. The two concerned workmen whose services are alleged to have been wrongfully terminated are respectively Shri Mangal Prasad, Ex-Pump Driver and Shri Prem Singh, Ex-Line Mistry. The case on behalf of the workmen is that Shri Mangal Prasad was one of the active members of the Branch of the North Chirimiri Colliery of the Chhattisgarh Colliery Workers' Federation. The management desired to have signatures of the workmen on a declaration in order to ascertain who were the members of the said Branch and accordingly called upon Shri Mangal Prasad when he went on duty as usual to sign the said declaration. But Shri Mangal Prasad refused to give his signature and he was, therefore, not allowed by the Overman to join his duties. He approached in vain the Manager as well as the Agent of the Colliery to permit him to work, and the Management stopped him from work without any charge-sheet or enquiry because of his trade union activities. As regards Shri Prem Singh, the case of the workman is that due to illness in the month of June 1956 he was under medical treatment and on recovery when he went to resume his duties with a fitness certificate from the doctor of the colliery, he was not allowed to do so. He approached the Manager continuously for six days in this connection but he was not taken back on work nor did the management reply to his application sent by registered post. He has been stopped from work with a view to victimize him for his trade union activities.

4. The management denies the alleged motive of victimization and states in the case of Shri Mangal Prasad that he remained absent from 24th January 1956 and since thereafter he never approached the Manager and/or the Agent. He having remained absent for a long time lost lien on his post as per rule 20(16) of the standing orders for the North Chirimiri Colliery. According to the management thus he has not been discharged or dismissed, and there arises no question of issuing any charge-sheet and/or holding an enquiry. As regards Shri Prem Singh, the management alleges that he never approached the Manager with a fitness certificate from the Colliery Doctor and his registered letter could not be answered as the person who had actually received the same could not possibly be detected, the signature of

the recipient being illegible. He having failed to report for duty and remained absent without prior permission of the management, lost his lien on the post as per rule 20(16) of the Standing Orders for the North Chirimiri Colliery. In his case too, therefore, there arises no question of any charge-sheet and/or enquiry in-as-much as the management never discharged or dismissed him.

5. Leaving aside the case on behalf of the workmen, and taking the case of the management at its best, this is obviously a case of wrongful termination of the services of both the concerned workmen Shri Mangal Prasad and Shri Prem Singh. According to the management both having remained absent without previous permission, lost lien on their respective posts. The Standing Order relied on by the management in this connection is meant for an entirely different purpose and it is applicable if there is over-staying of the leave previously sanctioned. So far as the absence from duty without previous permission of the management is concerned, there is a different provision under the Standing Orders according to which the habitual absence or consecutive absence for a certain number of days amounts to misconduct. If the management therefore desired to take any action for the alleged absence, it has in the first place to be shown that the absence in question amounted to misconduct and if so whether the proper procedure of a charge-sheet and an enquiry as contemplated under the Standing Orders was followed in order to terminate the services of the concerned workmen. In the case before us, the management has failed to make out any case of misconduct for the alleged absence and even otherwise the management has admittedly issued no charge-sheet nor has made any enquiry. It has merely proceeded on a wrong assumption that the two workmen for the alleged absence lost lien on their respective posts.

6. In the circumstances of the case, the action of the management cannot be upheld and the workmen Shri Mangal Prasad and Shri Prem Singh are directed to be reinstated on their original posts with full backwages and other amenities which they are entitled to.

Dated, 10th February, 1958.

(Sd.) P. D. VYAS,

Judge, Labour Court.

[No. LRII/55-2(19)/57.]

A. L. HANNA, Under Secy.